

Mail Stop Interference
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Paper 1
Filed: December 23, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Advanced Research and Technology Institute, Inc.
Junior Party
(U.S. Patent Applications 08/948,764, 08/955,572 and 10/027,199).

v.

Immunex Corporation
Senior Party
(U.S. Patent 7,211,259),

Patent Interference No. 105,662 (MPT)
(Technology Center 1600)

DECLARATION - Bd.R. 203(b)¹

- 1 **Part A. Declaration of interference**
- 2 An interference is declared (35 U.S.C. § 135(a)) between the above-
- 3 identified parties. Details of the application(s), patent (if any), reissue application

¹ "Bd.R. x" may be used as shorthand for "37 C.F.R. § 41.x". 69 Fed. Reg. 49960, 49961 (12 Aug. 2004).

1 (if any), count(s) and claims designated as corresponding or as not corresponding
2 to the count(s) appear in Parts E and F of this DECLARATION.

3 **Part B. Judge managing the interference**

4 Administrative Patent Judge Michael P. Tierney has been designated to
5 manage the interference. Bd. R. 104(a).

6 **Part C. Standing order**

7 A Trial Section STANDING ORDER [SO] (Paper 2) accompanies this
8 DECLARATION. The STANDING ORDER applies to this interference.

9 **Part D. Initial conference call**

10 A telephone conference call to discuss the interference is set for **2:00 p.m.**
11 on **February 10, 2009** (the Board will initiate the call).

12 No later than four business days prior to the conference call, each party shall
13 file and serve (SO ¶¶ 10.1 & 105) a list of the motions (Bd. R. 120; Bd. R. 204;
14 SO ¶¶ 104.2.1, 120 & 204) the party intends to file.

15 A sample schedule for taking action during the motion phase appears as
16 Form 2 in the STANDING ORDER. Counsel are encouraged to discuss the
17 schedule prior to the conference call and to agree on dates for taking action. A
18 typical motion period lasts approximately eight (8) months. Counsel should be
19 prepared to justify any request for a shorter or longer period.

1 **Part E. Identification and order of the parties**

2 Senior Party

3 Named Inventors: Raymond G. Goodwin, Seattle, WA

4 Craig A. Smith, Seattle, WA

5 Involved Patent: U.S. Patent No. 7,211,259, issued May 1, 2007, based on
6 U.S. Application 08/910,449, filed August 5, 1997.

7 Title: 4-1BB Polypeptides and DNA Encoding 4-1BB
8 Polypeptides

9 Assignee: Immunex Corporation

10 Junior Party

11 Named Inventor: Byoung Se Kwon, Carmel Indiana

12 Involved Applications:

- 13 i) U.S. Application 10/027,199, filed December 20, 2001, entitled
14 Receptor and Related Products and Methods;
- 15 ii) U.S. Application 08/955,572, filed October 22, 1997, entitled
16 Human H-4-1BB Protein;
- 17 iii) U.S. Application 08/948,764, filed October 10, 1997, entitled
18 Human Receptor H4-1BB Polypeptides and Methods For Use.

19 Assignee: Advanced Research and Technology Institute, Inc.

20 The senior party is assigned exhibit numbers 1001-1999. The junior party is
21 assigned exhibit numbers 2001-2999. Bd. R. 154(c)(1); SO ¶ 154.2.1. The senior
22 party is responsible for initiating settlement discussions. SO ¶ 126.1.

1 **Part F. Count and claims of the parties**

2 Count 1

3 A compound according to claims 7 or 16 of U.S. Patent 7,211,259 or
4 according to claim 24 of U.S. Application 08/955,572 or claim 1 of U.S.
5 Application 10/027,199.

6

7 The claims of the parties are:

8 Immunex '259: 1-19
9 Advanced Research and Technology Inst. '572: 5-6, 24, 26, 27-31
10 Advanced Research and Technology Inst. '764: 19-24, 26-36
11 Advanced Research and Technology Inst. '199: 1-3 and 19-23

12

13 The claims of the parties which correspond to Count 1 are:

14 Immunex '259: 1-2, 6-19
15 Advanced Research and Technology Inst. '572: 5-6, 24, 26-31²
16 Advanced Research and Technology Inst. '764: 19-24, 26, 28-36
17 Advanced Research and Technology Inst. '199: 1, 19 and 21-23

18

19 The claims of the parties which do not correspond to Count 1, and therefore
20 are not involved in the interference, are:

21 Immunex '259: 3-5
22 Advanced Research and Technology Inst. '572: None
23 Advanced Research and Technology Inst. '764: 27³
24 Advanced Research and Technology Inst. '199: 2, 3 and 20

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² '572 Claim 31 incorrectly refers to amino acid residues "1186" as opposed to "1-186."

³ '764 claim 27 depends from previously cancelled claim 25.

1 The parties are accorded the following benefit for Count 1:

2 Immunex Corporation

3 i) U.S. Application 08/236,918, filed May 6, 1994.

4 ii) U.S. Application 08/060,843, filed **May 7, 1993.**

5

6 Advanced Research and Technology Institute Inc.:

7 i) U.S. Application 08/461,652, filed June 5, 1995;

8 ii) U.S. Application 08/122,796, filed **September 16, 1993.**

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1 **Part G. Heading to be used on papers**

2 The following heading must be used on all papers filed in this interference,
3 see SO ¶ 106.1.1:

4 UNITED STATES PATENT AND TRADEMARK OFFICE

5 BEFORE THE BOARD OF PATENT APPEALS
6 AND INTERFERENCES

7 **Advanced Research and Technology Institute, Inc.**
8 Junior Party
9 (U.S. Patent Applications 08/948,764, 08/955,572 and 10/027,199).

10 v.

11 **Immunex Corporation**
12 Senior Party
13 (U.S. Patent 7,211,259),

14 Patent Interference No. 105,662 (MPT)
15 (Technology Center 1600)

1 **Part H. Order form for requesting file copies**

2 When requesting copies of files, use of SO Form 4 will greatly expedite
3 processing of the request. Please attach a copy of Parts E and F of this
4 DECLARATION with a hand-drawn circle around the patents and applications for
5 which a copy of a file wrapper is requested.

6
7 /Michael P. Tierney/
8 Administrative Patent Judge
9
10
11

12 Attorney for Advanced Research and Technology Institute, Inc.:

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14 Barnes & Thornburg, LLP
15 11 South Meridian
16 Indianapolis, IN 46204
17

18 Attorney for Immunex Corporation:

19
20 Immunex Corporation
21 Law Department
22 1201 Amgen Court West
23 Seattle, WA 98119
24
25
26
27

28 Enc:

29 Copy of STANDING ORDER
30 Copy U.S. Patent 7,211,259
31 Copy of claims of 08/948,764, 08/955,572 and 10/027,199
32

33 Revised 3 January 2006